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CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

October Term, 1937

No. 256

State of Indiana on relation of DOROTHY ANDERSON, Petitioner,

vs

Harry Brand, Trustee of Chester School Township of Wabash County, Indiana

REPLY OF HARRY BRAND, TRUSTEE OF CHESTER SCHOOL TOWNSHIP, WABASH COUNTY, INDIANA, TO PETITION OF RELATOR DOROTHY ANDERSON EX REL STATE OF INDIANA FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF INDIANA.

Raymond Brooks and George C. Gertman,
Attorneys for above named Respondent

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To the honorable Chief Justice and the associate justices of the Supreme Court of the United States:

The respondents object to the granting of a writ of certiorari and respectfully submit to this court that no question of "general national importance" and / or no "federal question of substance not heretofore determined by this court" is either involved or presented; the sole question decided by the Supreme Court of the state of Indiana is that no legislature can so bind future legislation in the matter of the regulation of education so as to prevent future legislation changing or repealing such regulation theretofore adopted by any legislature, the regulation of the educational system of the state being for the public welfare and bene-

fit and that teachers cannot obtain vested rights in any of the regulatory privileges granted thereby.

No question of contract is involved, teacher's tenure rights being statutory rights rather than contractual.

Furthermore, the decision of the Supreme Court of the State of Indiana is consonant with the principles of law established by the United States Supreme Court in Phelps vs The Board of Education of West New York—Askam vs The Board of Education of West New York, 57 Supreme Court Report 483, in which this honorable court said—

"'the position of the appellants is that by virtue of the act of 1909 three years of service under contract confers upon an employee of a school district a contractual status indefinite in duration which the legislature is powerless to alter or authorize the Board of Education to alter. The Supreme Court holds that the act of 1909 "established a legislative status for teachers but we fail to see that it established a contractual one that the legislature may not modify. ———The status of tenure teachers while in one sense contractual, is in essence dependent on a statute like that of the incumbent of a statutory office which the legislature at will may abolish, or whose emoluments it may change."

This court is not bound by a decision of a state court as to the existance and terms of a contract, the obligation of which is asserted to be impaired, but where a statute is claimed to create a contractual right we give weight to the construction of the statute by the courts of the state. Here those courts have concurred in holding that the act of 1909 did not amount to a legislative contract with the teachers of the state and did not become a term of the contracts entered

into with employees by the Board of Education. Unless these views are palpably erroneous we should accept them. ———we agree with the courts below that this was but a regulation of the conduct of the board and not a term of a continuing contract of indefinite duration with the individual teacher."

The Supreme Court of Indiana likewise said in the instant case, "the tenure statute was only intended as a limitation upon the plenery power of local school officials to cancel contracts and cannot be, a limitation upon the power of future legislatures to change the law respecting teachers and their tenure", and further in opinion denying rehearing the court said "on petition for rehearing, appellant earnestly contends that the decision of this case gives a retroactive effect to a statute, and permits the impairment of the obligation of a binding contract. The original opinion was intended to be understood as expressing the view that no contractual right to be continued as a teacher from year to year is involved———the tenure statute, in effect, grants a privilege to the teacher who has served five years, and signed a new additional contract to continue as a teacher, under certain conditions, by limiting the power of the local school officers to employ any one in the place of a tenure teacher. The teacher had no contractual right to continue in employment. The statute————required that the tenure teacher be reemployed unless there was necessary a reduction in the number of teachers;" the court further said "the right to control public policy in respect to the management and operation of schools, cannot be contracted away by one legislature so as to fix a permanent public policy, ————unchangeable by succeeding legislatures. ———Since the opinion was filed, the Supreme Court of the United States has

sustained————in appeals from two cases involving a situation comparable in all substantial respects with the case at bar, Phelps, etc." (cited above.)

The courts have also decided the fundamental question of the right of legislatures to change or repeal rights obtained by legislative enactment in the case of Rowekamp, et al v Mercantile Etc., 8th circuit court of appeals 72nd Federal Report 2nd series page 852 in which the court said "there are certain inherent powers in the government to enact laws to protect, ————and general welfare of society. This power———— has been said, to be as broad as the public welfare. (needs). It is an inherent attribute of sovereignty with which the state is endowed for the protection and general welfare of its citizens, and of which the state may not deprive itself, one state legislature cannot bind itself or its successors not to exercise this attribute of sovereignty, and all contracts whether made by the state itself, by its municipalities or by individuals are subject to be interfered with or otherwise affected by the subsequent statutes enacted in the bona fide exercise of the police power, and such legislative acts are not within the contract clause of the constitution."

The basic principals involved in this case and the New Jersey cases decided by this court are the same, viz; is a permanent indefinite tenure right created by statutory enactment regulating the employment of school teachers a vested right and binding on future legislation in that field so that such permanent indefinite tenure may not be changed or taken away by future legislation after a teacher has acquired tenure status.

Thus it may be observed that the fundamental principals of law established by this honorable court

in the cases cited above are decisive of the same questions as presented by petitioner.

This question being a matter of the regulation of public schools in the State of Indiana, it therefore could not present a matter of "general national importance".

There being no question presented within the rules of the United States Supreme Court for the granting of a writ of certiorari and there being no special or important reasons for invoking the judicial discretion of this court to grant such a writ in this case, it is respectfully submitted that the petition is without merit and the application for a writ of certiorari should be denied.

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APPENDIX A

INDIANA TEACHERS' TENURE ACT 1933
INDIANA ACTS 1933, p 716

(Bold face type—additions to 1927 act. Small Type in brackets—deletions from 1927 act.)

Teachers—Amendment—When to Become Permanent —Contracts—School Terms—Compensation—Salary Schedule—Uniformity of Contracts.

Section 1. Be it enacted by the general assembly of the State of Indiana, That section 1 of the above entitled act be amended to read as follows: Section 1. That any person who has served or who shall serve under contract as a teacher in any **(school city corporation or in any school town corporation)** in the State of Indiana for five or more consecutive years, and who shall at any time hereafter enter into a teacher's contract for further service with such corporation, shall thereupon become a permanent teacher of such school corporation. The term "teacher" as used in this section shall mean and include licensed public school teachers, supervisors and principals of all such public school corporations, and licensed assistant superintendents, and superintendents of such school corporations. Upon the expiration of any contract between such school corporation and a permanent teacher, such contract shall be deemed to continue in effect for an indefinite period and shall be known as an indefinite contract. Such an indefinite contract shall remain in force until such permanent teacher shall have reached the age of sixty-six years unless succeeded by a new contract signed by both parties or unless it shall be cancelled as provided in section 2 of this act; Provided, That teachers' contracts shall provide for the annual determination of the date of beginning and length of school terms by the school corporation; and,

Provided further, That teachers' contracts may contain provisions for the fixing of the amount of annual compensation from year to year by a salary schedule adopted by the school corporation and such schedule shall be deemed to be a part of such contract; Provided further, That such schedule may be changed by such school corporation on or before May first of any year, such changes to become effective at the beginning of the following school year; Provided, That all teachers affected by such changes shall be furnished with printed copies of such changed schedule within thirty days after its adoption; **(and, Provided further, That teachers ['] contracts shall be uniform and of the form and wording as prescribed by the state superintendent of public instruction.)**

Teachers—Indefinite Contract—Amendment — Cancellation—Time and Place of Hearing—Notice to Teacher— Statement of Reasons—Suspension of Teacher—Grounds for Cancellation—Board—Decision—Final.

Sec. 2. That section 2 of the above entitled act be amended to read as follows: Sec. 2. Any indefinite contract with a permanent teacher as defined in section 1 of this act may be cancelled only in the following manner: Not less than thirty days or more than forty days before the consideration by any such school corporation of the cancellation of any such contract, such teacher shall be notified in writing of the exact date, time when and place where such consideration is to take place; and such teacher shall be furnished a written statement of the reasons for such consideration within five days after any written request for such statement; and such teacher shall, upon written request for a hearing, filed within fifteen days after the

receipts by said teacher of notice of date, time and place of such consideration, be given such a hearing before the school board **(in the case of cities and towns, and before the township trustee, in the case of Townships;)** of such school corporation; such hearing shall be held not less than five days after such request is filed and such teacher shall be given not less than five days' notice of the time and place of hearing. Such teacher, at the hearing shall have a right to a full statement of the reasons for the proposed cancellation of such contract, and shall have a right to be heard, to present the testimony witnesses and other evidence bearing upon reasons for the proposed cancellation of such contract. No such contract shall be cancelled until the date set for consideration of the cancellation of such contract; nor until after a hearing is held, if such hearing is requested by said teacher; nor until, in the case of teachers, supervisors, and principals, the city or town superintendent shall have given the school corporation his recommendations thereon, and it shall be the duty of such superintendent to present such recommendations upon five days' written notice to him by such school corporation. Nothing contained in this section shall prevent the suspension from duty of any teacher pending a decision on the cancellation of such teacher's contract. Cancellation of an indefinite contract of a permanent teacher may be made for incompetency, insubordination (which shall be deemed to mean a wilful refusal to obey the school laws of this state or reasonable rules prescribed for the government of the public schools of such corporation), neglect of duty, immorality, justifiable decrease in the number of teaching positions or other good and just cause but may not be made for political or personal reasons;

Provided, That when the cause of cancellation of an indefinite contract is immorality or insubordination, as defined in this act, such cancellation shall go into effect at once; and, Provided further, That when the couse of cancellation of an indefinite contract is not immorality or insubordination, as defined in this act, such cancellation shall go into effect at the end of the school term following such cancellation. The school board of any such school corporation, by a majority vote, evidenced by a signed statement in the minutes of the board, may cancel an indegnite contract with a teacher after compliance with the provisions of this section; Provided, That the decision of the school board shall be final.

Teachers—Condition Precedent to Appointment and / or Making Permanent—Amendment — Superintendent—Statement—Contents—Proviso —Act Construed.

Sec. 3. That section 3 of the above entiled act be amended to read as follows: Sec. 3. No teacher shall be appointed by any such school corporation in Indiana, and no teacher shall become a permanent teacher in any such school corporation, until the school superintendent shall have made a report upon such teacher's preparation, experience, and license, and it shall be the duty of every such superintendent, within ten days after request, to make such report upon any person whom the school corporation is considering as an applicant; Provided, That nothing contained in this section shall be deemed to prevent the granting to any superintendent of additional authority in the selection and employment of teachers either by law or by the rules or regulations of any such school corporation.

Leaves of Absence — Periods of — Reasons for — Amendment — School Corporation — Proviso—

Right to Hearing.

Sec. 4. That section 5 of the above entitled act be amended to read as follows: Sec. 5. Any such school corporation, upon written request, may grant leave of absence, for periods not exceeding one year, to any permanent teacher for study or professional improvement or because of physical disability or sickness, subject to such rules and regulations governing leave of absense as may be adopted by such corporation; Provided, That without written request any such school corporation may place a permanent teacher on leave of absence for periods of not exceeding one year because of physical or other disability or sickness; Provided, That such teacher shall have a right to a hearing on such unrequested leave of absence in accordance with the provisions for hearings contained in section 2 of this act.

Amendment—Act Construed.

Sec. 5. That section 6 of the above entitled act be amended to read as follows: Sec. 6. This act shall be construed as supplementary to an act of the general assembly, page 195, Acts 1921, entitled "An act concerning teachers' contracts and providing for the repeal of conflicting laws."

APPENDIX B

The Constitution of the State of Indiana, Article 8 Sec. 1.

Sec. 1. Common Schools. Knowledge and learning, generally diffused throughout a community, being essential to the preservation of free government; It shall be the duty of the General Assembly to encour-

age, by all suitable means, moral, intellectual, scientific, and agriculture improvement; and to provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, equally open to all.

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RESPONDENT'S BRIEF.

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